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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.

Rulemaking 15-02-020
(Filed February 26, 2015)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING COMMENT
ON IMPLEMENTATION OF POTENTIAL LEGISLATIVE CHANGES RELATED
TO THE BIOENERGY FEED-IN TARIFF UNDER THE CALIFORNIA
RENEWABLES PORTFOLIO STANDARD AND TAKING
OFFICIAL NOTICE OF DOCUMENTS**

Background

The bioenergy feed-in tariff (BioMAT), established pursuant to Senate Bill (SB) 1122 (Rubio), Stats. 2012, Ch. 612, and implemented in Decision (D.) 14-12-081 and D.15-09-004, mandates procurement by the large investor-owned utilities (IOUs) from specified types of generation resources eligible under the California renewables portfolio standard (RPS) program. D.14-12-081 set the requirements for the BioMAT program; D.15-09-004 approved with modifications the IOUs' BioMAT tariffs and ancillary documents. The first BioMAT program period began February 1, 2016.

As part of the budget process for 2016-2017, the Legislature is considering two "trailer bills" relevant to the BioMat program. Senate Bill (SB) 840 and Assembly Bill (AB) 1612 each contain identical language, proposing to add a new

subsection (4) to Pub. Util. Code § 399.20(f).¹ The proposed language is set out in Attachment A to this ruling.²

The proposed changes would change the eligibility criteria for projects characterized in Section 399.20(f)(2)(iii), “bioenergy using byproducts of sustainable forest management.”³ The proposed changes focus on the process of seeking interconnection of such projects.

In order to facilitate incorporating the proposed legislative changes, if and when they are enacted, into the BioMAT program in a timely manner, parties are asked to respond now to the questions in this ruling.

Comments

Comments should address each question presented in this ruling. It is not necessary to reproduce the question, but responses should be numbered to match the questions addressed, or otherwise clearly identify the issue being discussed.

Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. Where appropriate and useful, quantitative examples should be provided.

Comments should be complete in themselves and should not incorporate by reference any other materials. Although the proposed legislative changes are similar in some respects to the proposed changes made in comments by the

¹ All further references to sections are to the Public Utilities Code unless otherwise specified.

² This language appears, identically, in Section 9 of SB 840 and in Section 10 of AB 1612. In this ruling, the proposed changes to the statute will be referred to as “proposed changes,” or similar terms, without reference to the individual bills.

³ Parties often refer to such projects as “Category 3” BioMAT projects.

Bioenergy Association of California (BAC)⁴ earlier in this proceeding, parties should not incorporate by reference or attach any prior comments filed in response to the Administrative Law Judge's Ruling Requesting Supplemental Comment on Interconnection Issues Related to the BioMat under the California Renewables Portfolio Standard and Stating Intention to Take Official Notice of Documents (May 6, 2016) (Supplemental Ruling). Other materials necessary to the response should be attached, or, if the materials are available on a website, the link to the materials should be given.

All comments should use publicly available materials. All comments should specifically identify, with respect to each question, whether any potential sources of information addressed in the response to the question are confidential.

Comments of not more than 20 pages may be filed and served not later than August 24, 2016. Reply comments of not more than 10 pages may be filed and served not later than August 31, 2016.

Questions for Comment

Party comment was requested on the BAC interconnection proposal in the Supplemental Ruling. Parties are now asked to comment on the changes made to Section 399.20 proposed in Section 9 of SB 840 and Section 10 of AB 1612. Comments should be directed to the specific statutory changes, not to issues of interconnection for the BioMAT program in general.

⁴ Bioenergy Association of California's Comments on Administrative Law Judge's Ruling on the Staff Proposal to Implement the Governor's Emergency Proclamation on Tree Mortality and Seeking Comment on the Staff Proposal (February 26, 2016), at 11-16 (BAC interconnection proposal).

1. What, if any, are the relevant differences for purposes of implementation and administration of the BioMAT program between the new legislative proposals and the previous BAC interconnection proposal?
2. What, if any, effect will the changes proposed by the legislation have on interconnection procedures under Rule 21? Provide a detailed explanation of your position, with examples if relevant.
3. The proposed legislation provides in part that a project that meets the requirements of that section “is not required to have a pending active interconnection application to be eligible” for the BioMAT tariff. Thus, a developer could seek and pay for a System Impact Study (also called Phase 1 study) for its interconnection request, but not meet the requirements to maintain its interconnection queue position, and therefore be dropped from the interconnection queue.⁵ The developer could, at the same time, submit a program participation request and maintain a position in the BioMAT bidding queue.

Should the California Public Utilities Commission (Commission) require any additional financial security from projects that have received a Phase 1 study but have left the interconnection queue while bidding into BioMAT, in accordance with the proposed legislation? For example,

- A deposit of a fixed sum of money, e.g., \$50,000, with the IOU with which the project seeks a BioMAT contract;
- A deposit with the IOU of a multiple of the system impact study fee (e.g., five times the study fee);

⁵ The Energy Division Staff Proposal to Implement Governor’s Emergency Proclamation on Tree Mortality by Making Targeted Changes to the BioMAT program to Facilitate Contracts with Facilities using Fuel from High Hazard Zones (February 12, 2016) (Staff Proposal) explains that, in order to maintain a position in the Rule 21 interconnection queue after completion of a System Impact Study, a project developer must provide required financial security. (Staff Proposal at 5; *see* Rule 21, Sections F.3.b (iv) and F.4.)

- A deposit with the IOU of a small fraction of the interconnection costs estimated in the Phase 1 study (e.g., 5 percent of the estimated costs).

Provide a detailed rationale for your choice, with examples if relevant.

4. Should any required deposit be refundable to the developer? If yes, under what circumstances (e.g., execution of a BioMAT contract with the IOU)? If not, how should the deposit be accounted for and applied?
5. Should there be a limit on the number of times a developer may have a system impact study done for the same project while remaining in the BioMAT queue before executing a BioMAT contract for that project? If yes, provide a rationale and a proposed numerical limit. If no, provide a rationale for your choice.
6. The proposed legislation provides that, for a project that has dropped out of the interconnection queue and then executes a BioMAT contract, "the time to achieve commercial operation shall begin to run from the date when the new system impact study or other interconnection study is completed rather than from the date of execution of the standard contract." What, if any, would be the effects on the IOUs' administration of the BioMAT program of this extension of time to achieve commercial operation for those projects that have used the process proposed in the legislation?
7. What if any changes would be required in the IOUs' administration of the BioMAT tariff to manage the eligibility of projects identified in proposed new Section 399.20(f)(4)(A)(i) and (ii)?⁶

⁶ § 399.20(f)(4)(A) provides in part that eligibility for BioMAT is extended to projects if:

(i) The project is already interconnected.(ii) The project has been found to be eligible for interconnection pursuant to the fast track process under the relevant tariff.

8. What changes would be required to the BioMAT tariff and/or the BioMAT standard contract in order to implement the proposed statutory changes? Please be specific, and justify each change proposed. A redline version of the current tariff and/or power purchase agreement (as relevant) reflecting the proposed changes should be attached to comments.

Official Notice of Documents

The Supplemental Ruling gave notice of the intent to take official notice of the following documents:

1. Letter from Ken Pimlott, Director of California Department of Forestry and Fire Protection to Michael Picker, President of the Commission, dated April 6, 2016. The letter may be found at:
http://www.fire.ca.gov/treetaskforce/downloads/HHZ_Ltr_to_CPUC_President_Picker.pdf.
2. The mapped geospatial data defining high hazard zones available in GIS Map Viewer, as referred to in the Pimlott letter. The map viewer may be found at:
www.treetaskforce.org; Tree Mortality Viewer.

No objections having been submitted to taking official notice, official notice will now be taken of these two documents.

IT IS RULED that:

1. Comments of not more than 20 pages may be filed and served not later than August 24, 2016, in accordance with the instructions in this ruling.
2. Reply comments of not more than 10 pages may be filed and served not later than August 31, 2016.
3. Official notice is taken of the following documents:

- a. Letter from Ken Pimlott, Director of California Department of Forestry and Fire Protection to Michael Picker, President of the California Public Utilities Commission, dated April 6, 2016. The letter may be found at:
http://www.fire.ca.gov/treetaskforce/downloads/HHZ_Ltr_to_CPUC_President_Picker.pdf.
- b. The mapped geospatial data defining high hazard zones available in GIS Map Viewer, as referred to the Pimlott letter. The map viewer may be found at
www.treetaskforce.org; Tree Mortality Viewer.

Dated August 17, 2016, at San Francisco, California.

/s/ ANNE E. SIMON

Anne E. Simon
Administrative Law Judge

ATTACHMENT A
PROPOSED ADDITION OF PUBLIC UTILITIES CODE SECTION 399.20(f)(4)
(Senate Bill 840 and Assembly Bill 1612)

(4) (A) A project identified in clause (iii) of subparagraph (A) of paragraph (2) is eligible, in regards to interconnection, for the tariff established to implement paragraph (2) or to participate in any program or auction established to implement paragraph (2), if it meets at least one of the following requirements:

- (i) The project is already interconnected.
- (ii) The project has been found to be eligible for interconnection pursuant to the fast track process under the relevant tariff.
- (iii) A system impact study or other interconnection study has been completed for the project under the relevant tariff, and there was no determination in the study that, with the identified interconnection upgrades, if any, a condition specified in paragraph (2), (3), or (4) of subdivision (n) would exist. Such a project is not required to have a pending, active interconnection application to be eligible.

(B) For a project meeting the eligibility requirements pursuant to clause (iii) of subparagraph (A) of this paragraph, both of the following apply:

- (i) The project is hereby deemed to be able to interconnect within the required time limits for the purpose of determining eligibility for the tariff.
- (ii) The project shall submit a new application for interconnection within 30 days of execution of a standard contract pursuant to the tariff if it does not have a pending, active interconnection application or a completed interconnection. For those projects, the time to achieve commercial operation shall begin to run from the date when the new system impact study or other interconnection study is completed rather than from the date of execution of the standard contract.